

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

GUY ALLEN, )  
                  )  
                  )  
Movant,         )  
                  )  
                  )  
vs.              )                  Case No. 4:10CV1488 JCH  
                  )  
                  )  
UNITED STATES OF AMERICA, )  
                  )  
                  )  
Respondent.     )

**MEMORANDUM AND ORDER**

On June 11, 2009, Movant Guy Allen was convicted by jury trial of possession of a machine gun. (See Cause No. 4:09CR161 JCH, Doc. No. 53). On November 20, 2009, Movant was sentenced to twenty-four months imprisonment, followed by a two year term of supervised release. (Cause No. 4:09CR161 JCH, Doc. No. 71). The Court's records indicate that Movant filed a Notice of Appeal on November 30, 2009 (Cause No. 4:09CR161 JCH, Doc. No. 73), and that the appeal is still pending as of the date of this Memorandum and Order.

Movant filed the instant Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody on August 10, 2010. (Doc. No. 1). As noted above, however, Movant currently has a direct appeal pending before the Eighth Circuit Court of Appeals. See United States v. Allen, No. 09-3785. Therefore, Movant's § 2255 motion is prematurely filed and must be dismissed. Rodgers v. United States, 2005 WL 1463489 (E.D. Mo. Jun. 17, 2005); United States v. Jagim, 978 F.2d 1032, 1042 (8th Cir. 1992).

Accordingly,

**IT IS HEREBY ORDERED** that Movant's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Doc. No. 1) is **DISMISSED** without

prejudice, as prematurely filed. An appropriate Order of Dismissal shall accompany this Memorandum and Order.

**IT IS FURTHER ORDERED** that because Movant cannot make a substantial showing of the denial of a constitutional right, the Court will not issue a certificate of appealability. See Cox v. Norris, 133 F.3d 565, 569 (8th Cir. 1997), cert. denied, 525 U.S. 834 (1998).

Dated this 13th day of September, 2010.

/s/ Jean C. Hamilton  
UNITED STATES DISTRICT JUDGE